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Supreme Court, U.S.
FILED
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No. 04-562

IN THE SUPREME COURT OF THE UNITED STATES

October Term 2005

PATRICIA J. SKONIECZNY,

Petitioner

vs.

In Re: CONDEMNATION BY THE ECONOMY BOROUGH MUNICIPAL AUTHORITY of: rights-of-way and easements of certain land situate in the Borough of Economy, for the purpose of the Phase II Project.

Respondent

REPLY BRIEF

Patricia J. Skonieczny, Pro Se
104 Rock Rose Drive
Baden, PA 15005
(724) 869-3843

QUESTIONS PRESENTED FOR REVIEW

1. WHETHER THE PENNSYLVANIA COURTS ERRED BY FAILING TO ADDRESS WHETHER OR NOT THE TRIAL COURTS OCTOBER 11, 2002 ORDER WAS VIOLATIVE OF THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION, ARTICLE 1 SECTION 10 AND ARTICLE 10 SECTION 4 OF THE PENNSYLVANIA CONSTITUTION AND 26 P.S. §1-403 (a) OF THE EMINENT DOMAIN CODE.

2. IF THE PETITIONER/CONDEMNEE DID NOT HAVE STANDING TO CHALLENGE THE SUFFICIENCY OF THE BOND FOR THE ENTIRE PHASE II SEWER PROJECT, THEN SURELY THE PRELIMINARY OBJECTORS/CONDEMNEES IN THE AFTERNOON CLOSED DOOR SESSION IN CHAMBERS LACKED STANDING TO ENTER INTO AN AGREEMENT AS TO THE SUFFICIENCY OF THE BOND FOR THE ENTIRE PHASE II SEWER PROJECT.

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II. INTRODUCTION

The Petitioner, Patricia J. Skonieczny, ("Skonieczny") presents this Court with a Petition for Writ of Certiorari regarding the Commonwealth Court of Pennsylvania's affirmation of the Court of Common Pleas of Beaver County's December 17, 2002 (App. 15.); October 29, 2002, (App. 19.); and October 11, 2002 (App. 20.) Orders which renders the protection of the Fifth Amendment of the United States Constitution, Article 1 Section 10 and Article 10 Section 4 of the Pennsylvania Constitution and 26 P. S. § 1-403 (a) of the Eminent Domain Code obsolete, meaningless and a nullity.[1]

Contrary to the Respondent's mischaracterization of the Petitioner's dissatisfaction over the Economy Borough Municipal Authority's (the "Authority") Phase II Sewer Project, the Petitioner has relentlessly opposed the fact that the Authority has posted NO BOND for not only the Petitioner but also for the other 926 Condemnees (R.R. 9a-10a) in violation of the Petitioner's Pennsylvania and United States Constitutional rights and the Pennsylvania Eminent Domain Code.

The project has been unlawfully financed, constructed and completed when all of the preliminary objections have yet to be disposed of in total disregard of the Petitioner's right to question and challenge by way of preliminary objections, the sufficiency, form and/or existence of the Bond among other things for the entire Phase II Sewer Project

The record is void of any decisions of the Pennsylvania Courts with regard to the Petitioner's challenge to the Bond with regard to the Authority's entire Phase II Sewer Project and the propriety of the alleged Settlement and Mediation Conference

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[1] Throughout this Reply Brief, the designation "App." refers to the Appendix submitted with the Petition for Writ of Certiorari; the designation R.R. refers to the Reproduced Record filed in the Commonwealth Court of Pennsylvania

that was conducted in a closed door session "In Chambers" in the afternoon of the October 11, 2002 Hearing..

III. COUNTERSTATEMENT RELEVANT FACTUAL BACKGROUND

THERE IS NO BOND FOR THE PETITIONER OR THE OTHER 926 CONDEMNEES.

What the record clearly shows is that the Respondent and the lower Courts' have either misconceived the true nature of this case or have consistently and intentionally ignored and disregarded the crux issues which has resulted in rendering the protection of the United States and Pennsylvania Constitutions, and the Eminent Domain Code obsolete, meaningless, and a nullity.

The Petitioner respectfully urges the Honorable Supreme Court of the United States if nothing else, to read the Transcript (R.R. 88a-108a) of the afternoon closed door session "In Chambers" of the alleged Settlement and Mediation Conference to be enlightened as to the travesty of Justice that has occurred to not only the Petitioner but also to the other 926 Condemnees in addition to the citizens of the Borough of Economy.

A simple reading of the afternoon closed door session "In Chambers" will prove that:

a. The Authority was unable to post a Bond. (R.R. 89a)
b. The $500,000.00 was borrowed money at 2.4% out of the Authority's Line of Credit that Counsel for the Authority stated that needed to be kept in an interest bearing account of 2%. (R.R. 101a)
c. That the $500,000.00 fund was only for the preliminary objectors presently before the court

and did not *secure* compensation for the remaining Condemnees. (R.R. 92a, 95a,)

d. The Judges acted as mediators in violation of the Pennsylvania Code of Judiciary Conduct at Canon 5 E. (R.R. 8a, 88a and 95a)
e. The Court abused its discretion when the court admitted it had problem with decision making process under 406 but nonetheless made the decision. (R.R. 96a)
f. The Petitioner was not represented or part of the morning session of the October 11, 2002 Hearing. (R.R. 32a-33a)
g. The Petitioner was not represented or part of the afternoon closed door session "In Chambers." (R.R.86a-87a)
h. The Court did not have jurisdiction over the Petitioner for the Respondent failed to timely file an answer to the Petitioner's preliminary objections and/or to Praecipe the Petitioner for Argument for the October 11, 2002 Hearing. (R.R.47a)
i. The Petitioner was not a party who receives a monthly report as the other preliminary objectors' that were part of the afternoon closed door "In Chambers" session do. (R.R. 103a)
j. There is NO BOND posted for the Petitioner.
k. There is NO BOND posted for the remaining 926 Condemnees.

IV. THE RESPONDENT'S RELIANCE ON IN *RE CONDEMNATION BY PENN TWP.* AND *ILLIG V. CHARTIERS SOUTHERN RAILWAY CO.* IS MISPLACED.

The Respondent's reliance on *In Re Condemnation by Penn Twp.*, 702 a.2D 614 (Pa. Commw. Ct. 1997) and *Illig v.*

Chartiers Southern Railway Co., 112 A. 116 (Pa. 1920) is misplaced. The Commonwealth Court's reliance on *Illig* supra is also misplaced. The Commonwealth Court opined that "the practice of filing such bonds in an indeterminate or unlimited amount has long been upheld by our courts." (App. A-11)

In the present case, it was not found that the Bond was insufficient and the Court required additional security but in fact and the record shows that the Authority could not obtain a Bond at all. The morning session of the October 11th Hearing revealed that the Authority's own witness, Michael D. Pope, testified that he could not obtain a Bond on behalf of the Authority.

The Authority admitted that they did not have a Bond when it requested Michael D. Pope, the broker of record for the Authority to try and obtain a bond that might be required in this matter (R.R51a-59a.)

Michael D. Pope, testified that there was no bonding company that's was willing to issue a bond to the Economy Borough Sewage Authority to guarantee the monies that are needed to pay the property owners for the taking. (TR p.28 R.R. 59a)

The afternoon closed door session In Chambers revealed that the Authority's Counsel was amazed that he could not find a bond. (TR p.4, R.R.89a).

The $500,000.00 of borrowed money from the Authority's Sky Bank Line of Credit was not additional security as the Respondent would have the Court believe but in fact simply the Authority's borrowed cash fund to cover the preliminary objectors presently before the Court. (R.R. 106a) leaving No Bond or additional security for the Petitioner or the remaining 926 Declarations of Taking. In fact, Attorney Stanichak asked if he should continue pursuing the Bond and Counsel for the Authority

and the Court both agreed for him to keep trying to get a Bond. (R.R. 106a-107a)

Not all Counsel and the other pro se Condemnee agreed with the $500,000.00 cash fund and it was argued that even the $500,000.00 was insufficient for the preliminary objectors presently before the Court. (93a , 94a, 95a) As stated above the Court admitted it had problem with decision making process under 406 but nonetheless made the decision that in fact the $500,00.00 was sufficient without any basis for its' decision. (R.R. 96a)

The question presented is if one cannot preliminary object to the sufficiency of the Bond for the entire Phase II Sewer Project, then how one can enter into an agreement to the sufficiency of the Bond for the entire Phase II Project.

The Respondent attempts to draw the Court's attention away from the true issues by insisting the objection to the sufficiency of the bond is over a ten (10) foot temporary construction easement on the Petitioner's property. Both the Commonwealth Court and the Respondent incorrectly assert that the Petitioner was afforded two hearings and failed to show that the $500,000.00 was not sufficient to cover the Petitioner's ten foot temporary construction easement. The record evidence shows that the Petitioner unlike the other preliminary objectors before the court was granted only one hearing and not two as the Commonwealth Court and Respondent asserts. All of the other preliminary objectors were granted a second hearing after the October 11th hearing that the Petitioner was not part of.

The Respondent's reliance on both *Illig v.Chartiers Southern Railway* , 112 A. 116, 117 (Pa. 1920) and *In Re Condemnation by Penn Twp.*, 702 A.2d 614, 617 (Pa. Commw. Ct. 1997) to support the Authority's ability to pay any compensation that is required is misplaced. *In Re Condemnation by Penn Twp*, supra was with regard to preliminary objections to the township's taking. The township had taxing power unlike the

Economy Borough Municipal Authority and therefore it was found that the townships' power of taxation provided sufficient security to insure payment of just compensation.

In the present case, it was found that the purported Bond was in fact insufficient. Pursuant to the Court's October 11, 2002 Order, the $500,000.00 cash fund of borrowed money was for the preliminary objectors presently before the court (which did not include the Petitioner). If the Bond was found to be insufficient and a $500,000.00 deposit account was established as the Phase II Condemnations Damages Security Account for only the preliminary objectors presently before the court then it would follow that it was also insufficient for rest of the 927 Condemnees and in fact there was NO BOND pursuant to the second half of the Court's Order

The provisions of the Constitutions were designed to protect the rights of its citizens. The afternoon closed door session "In Chambers" is a mockery of the Justice System.

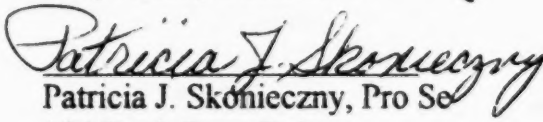
The Petitioner and her husband (the "Condemnees") have raised their nine children to believe in and enjoy the freedoms and rights that this great country provides and offers. And, the hope and trust in a Judicial System designed to protect those freedoms and rights. The Condemnees three sons are currently serving in the military. Two are in the Air Force and the third is in the Marines. They understand and have essentially offered their lives up to protect all of our rights and freedoms. The Condemnees would be remiss and hypocritical to know that their rights were being violated in their own back yard and do nothing about it. How would the Condemnees be able to face their sons when they come home from serving their country in various parts of the world if they knowingly sat back and did nothing? They couldn't. While the Petitioner understands the voluminous amount of Petitions for Writ of Certiorari submitted to the United States Supreme Court, the Petitioner respectfully urges and prays that the Honorable Court take notice of the present one. The

Petitioner would even go so far as to urge and pray for a Federal investigation to be conducted with regard to the unlawful financing, construction and completion of the Authority's Sewer Project that has burdened approximately 3300 homes with over a $60,00,000.00 debt service for its' sewer system and the Pennsylvania Court system that has enabled it.

V. CONCLUSION

For all of the above reasons, the Petitioner's objections to the lower Courts' decisions or lack thereof, constitute compelling reasons for certiorari.

Respectfully submitted,



Patricia J. Skonieczny, Pro Se
104 Rock Rose Drive
Baden, Pa. 15005
724-869-3843

Dated: December 6, 2004

VERIFICATION

I, Patricia J. Skonieczny, Petitioner herein, deposes and says, subject to the penalties of 18 PA. C.S.A. §4904, relating to unsworn falsification to authorities, that the facts set forth in the foregoing "Reply Brief" are true and correct to the best of my knowledge, information and belief.

Dated: December 6, 2004

Patricia J. Skonieczny

Patricia J. Skonieczny